

123 FERC ¶ 61,025  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Dominion Resources Services, Inc.

v.

Docket No. EL08-36-000

PJM Interconnection, L.L.C.

ORDER APPROVING CONTESTED SETTLEMENT

(Issued April 10, 2008)

1. On January 28, 2008, Dominion Resources Services, Inc., on behalf of its affiliates Dominion Energy Marketing, Inc. (DEMI) and Fairless Energy, LLC (Fairless Energy) (collectively, Dominion), filed a complaint pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> against PJM Interconnection, L.L.C. (PJM). Dominion alleged that PJM, without justification or authority, failed to timely process Dominion's interconnection request for enhanced capacity at a Fairless facility in accordance with PJM's Open Access Transmission Tariff.<sup>2</sup> Dominion asserted that without this certification, it would not be able to bid the full output of the Fairless facility in the 2011-2012 Reliability Pricing Model (RPM) base residual auction that commences May 2008.<sup>3</sup> In an order

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<sup>1</sup> 16 U.S.C. § 824e (2000 & Supp. V 2005).

<sup>2</sup> The Fairless generating facility consists of two gas-fired, combined cycle generating units located in PJM's Eastern Mid-Atlantic Load Deliverability Area.

<sup>3</sup> Dominion asserts that PJM's delay in processing Dominion's interconnection request already forced it to scale back its capacity offer into the base residual auction for the 2010-2011 delivery year.

issued on February 4, 2008, the Commission directed that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure,<sup>4</sup> to aid the parties in settling the dispute.<sup>5</sup>

2. On March 12, 2008, PJM filed a proposed offer of settlement (Settlement) and an Explanatory Statement in the above-captioned proceeding on behalf of itself and several other Signatory Parties.<sup>6</sup> The Signatory Parties assert that the Settlement is intended to resolve all issues discussed in the Commission's February 4, 2008 Order without the need for an evidentiary hearing or any further proceedings. On March 28, 2008, the Administrative Law Judge filed a report to the Commission that the proposed Settlement is contested and forwarding the Settlement to the Commission.<sup>7</sup>

3. Upon consideration of the comments filed by Commission Trial Staff (Trial Staff) and parties, we decide the contested issues on their merits. We find that the Settlement is just and reasonable. Based on these findings, we approve the Settlement, as discussed below.

### **Settlement**

4. The Settlement sets forth (1) study procedures for the system impact studies for certain pending interconnection requests in PJM's "R" queue that relate to facilities proposed to be located in electrical and geographic proximity to Project Q75 (Affected Projects); (2) procedures for stakeholder processes regarding interconnection studies and queuing, and provisions for the filing of related, proposed modifications of the PJM Tariff; and (3) Dominion's capacity interconnection rights. While PJM is a Party to the Settlement, PJM takes no position regarding the Settlement's provisions establishing the capacity interconnection rights of the Fairless facility.

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<sup>4</sup> 18 C.F.R. § 385.603 (2007).

<sup>5</sup> *Dominion Resources Services, Inc. v. PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,092 (2008) (February 4, 2008 Order).

<sup>6</sup> Dominion, Baltimore Gas and Electric Company; Duke Energy Ohio, Inc.; Exelon Corporation (Exelon); Jersey Central Power & Light Company; Metropolitan Edison Company and Pennsylvania Electric Company; LS Power Associates, L.P.; Pepco Holdings Inc; and Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC (collectively PSEG) (individually a Signatory Party and collectively the Signatory Parties).

<sup>7</sup> *Dominion Resources Services, Inc. v. PJM Interconnection, L.L.C.*, Docket No. EL08-36-000, March 28, 2008 (unpublished report).

5. Article Three sets forth the settlement terms concerning the system impact studies and PJM stakeholder processes. Section 3.1 identifies the Affected Projects. Section 3.2 establishes the procedures for the system impact studies for the Affected Projects. Under those procedures, PJM shall assume that Project Q75 will remain in the queue and, accordingly, will include all network upgrades required for Project Q75, as identified in the system impact study for Project Q75 published on February 12, 2008, in the system modeling that PJM uses for interconnection studies of subsequent projects in the interconnection queue, including all of the interconnection requests to which the Settlement expressly refers. However, in the event that Project Q75 decreases its capacity or withdraws from the interconnection queue, the procedures described in section 3.2(e) regarding decreases in capacity or withdrawal of earlier queued projects shall apply. Section 3.2(b) provides that PJM shall complete the system impact studies in accordance with applicable PJM Tariff provisions, including applicable terms governing cost responsibility, for interconnection requests Q86 and Q90, and two requests in the “Q” queue that involve facilities located in electrical and geographic proximity to Project Q75 and which have priority over the Affected Projects.

6. Section 3.2(c) provides that PJM shall complete a single, consolidated system impact study for the Affected Projects as a “cluster.” Accordingly, PJM (1) shall perform the requisite power flow and other analyses associated with the system impact study based on adding all of the Affected Projects to the system simultaneously and determining the Network Upgrades and Local Upgrades needed to accommodate all of the Affected Projects in the aggregate, and (2) shall allocate cost responsibility for the required Network Upgrades and Local Upgrades among the Affected Projects based on the distribution factor analysis described in Appendix A to the Settlement. Section 3.2(c) further states that the Commission’s approval of the Settlement will constitute a waiver of the terms of the PJM Tariff to the extent necessary to permit PJM to complete the system impact study and related cost allocations for the Affected Projects in the manner described in the Settlement.

7. The “clustered” system impact study described in section 3.2(c) will not include stability analyses. Stability analysis will be performed on a project-specific basis as part of the facilities study for each of the Affected Projects. Costs for system upgrades or modifications to resolve stability violations associated with any Affected Project will be allocated in accordance with PJM’s current methodology, and not in accordance with the cost allocation methodology described in Appendix A.

8. Section 3.2(d) provides that in accordance with applicable terms of the PJM Tariff, subsequent to completion of the system impact study described in the Settlement, (1) the allocation of any benefits or rights associated with the upgrades required for the Affected Projects shall follow the cost responsibility for such upgrades in accordance with the PJM Tariff, and (2) each Affected Project will be subject to allocations of cost responsibility

for upgrades determined to be needed for earlier queued projects, and will be subject to reductions in its cost responsibility to the extent that later-queued projects are determined to contribute to the need for upgrades that are needed for such Affected Project.

9. Section 3.2(e) provides that in the event any earlier queued project or Affected Project reduces its requested capacity or withdraws (or is deemed to withdraw in accordance with the PJM Tariff) from the interconnection queue after the system impact study for the Affected Projects is completed, cost allocations among the Affected Projects will be recalculated in accordance with the methodology set forth in the Settlement, but in all other respects PJM shall perform any necessary restudy in accordance with the restudy provisions of the PJM Tariff.

10. Section 3.3 provides that PJM shall make a good faith effort to complete the system impact study for the Affected Projects by April 28, 2008, in order to facilitate bidding into the RPM base residual auction for Planning Year 2011-2012 by those of the Affected Projects that otherwise will be eligible to make such bids. PJM shall make a good faith effort to complete the thermal and short circuit analyses for the Affected Projects as quickly as possible and to make the results of those studies available to the sponsors of those projects prior to completion of the system impact study. In the event that PJM is unable to complete the system impact study for the Affected Projects by April 28, 2008, PJM shall so notify the sponsors of the Affected Projects and shall provide an estimated completion date, along with an explanation of the reasons why additional time is needed to complete the study.

11. Section 3.4 sets forth procedures for stakeholder processes and related modifications of the PJM Tariff regarding interconnection studies and queuing. PJM shall re-charter the existing Regional Planning Process Working Group to undertake a meaningful stakeholder process for consideration of the matters described in section 3.4. Section 3.4(a) provides that PJM shall direct the Regional Planning Process Working Group to evaluate queuing issues, including methodologies for clustering of system impact studies, allocations of cost responsibility on the basis of distribution factor analysis, and requiring designation of primary and secondary proposed points of interconnection. PJM shall make a good faith effort to obtain, by May 30, 2008, approval or endorsement by PJM stakeholder committees of changes to the PJM Tariff to reform the present interconnection study process. In the event PJM has not obtained the requisite approvals or endorsements by PJM stakeholder committees to file proposed changes to the PJM Tariff by May 30, 2008, PJM promptly thereafter shall unilaterally file proposed changes with the Commission addressing the matters described in the first sentence of this paragraph.

12. Section 3.4 also provides that the Regional Planning Process Working Group will evaluate issues related to the PJM Tariff's provisions regarding loss of capacity interconnection rights and other issues related to interconnection studies and queuing.

13. Article Four addresses the capacity interconnection rights of the Fairless facility and withdrawal of the complaint. Section 4.1 provides that upon the Commission's approval of the Settlement, Dominion's existing Fairless generation facility shall be entitled to 1,094.1 MW of capacity interconnection rights at its Point of Interconnection. Additionally, PJM shall use this quantity in the system impact study for the Affected Projects described in Article Three of the Settlement, subject to the Commission's approval of the Settlement.<sup>8</sup> Section 4.2 addresses withdrawal of Dominion's complaint. Upon the Commission's approval of the Settlement, Dominion will be deemed to have filed a notice of withdrawal in compliance with Rule 216(b) of the Commission's Rules of Practice and Procedure 18 C.F.R. § 385.216(b) (2007), and to have withdrawn its complaint in this proceeding.

14. Section 5.5 provides that nothing contained in the Settlement is to be construed as constituting a waiver of any Party's FPA section 205 and 206 rights, 16 U.S.C. §§ 824d, 824e (2000 & Supp. V 2005). In addition, section 5.6 provides that nothing in the Settlement is intended to impose the "public interest" standard of review<sup>9</sup> on either the Parties or the Commission, or to prevent the Commission from acting on its own motion with respect to this proceeding.

15. Section 5.11 provides that the Settlement shall bind the Parties upon signing, and the effective date of the settlement provisions shall be the date established by the Commission upon acting on the Settlement. Further, the Settlement is expressly conditioned upon the Commission's acceptance of the terms and conditions of the Settlement, without modifications or omission.

### **Comments on the Settlement**

16. On March 19, 2008, the Maryland Public Service Commission (Maryland PSC), PSEG, Exelon, and Trial Staff filed comments in support of the Settlement, while Competitive Power Ventures, Inc. (CPV) filed comments opposing the Settlement. On March 24, 2008, PJM, Dominion, Trial Staff and Exelon filed reply comments to CPV's initial comments opposing the Settlement.

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<sup>8</sup> As noted above, PJM is a Party to the Agreement and accepts its resolution of all issues presented by Dominion's complaint, but PJM takes no position on the merits of granting the existing Fairless generation facility 1,094.1 MW of Capacity Interconnection Rights.

<sup>9</sup> See *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

### **Supporting Comments**

17. According to Trial Staff, the Settlement is a fair and reasonable resolution of the issues and is in the public interest. The Settlement gives Dominion value for the \$45 million in upgrades to PJM's network that Dominion funded when it first interconnected the Fairless facility. Furthermore, Dominion's project, and the other projects that will be clustered with Dominion's, will benefit by PJM's promised "good faith" efforts to complete their system impact study by April 28, in time for those who are eligible to bid into the base residual auction. In addition, these projects will also benefit from the potential to share cost allocations with later queued projects that are determined to contribute to the need for upgrades. Maryland PSC states that every megawatt is essential to the reliability of the system and that an acceleration of the queue process will bring more projects to the RPM base residual auction, which in turn will bring more megawatts to the grid. Similarly, Trial Staff contends that the Settlement benefits ratepayers because there is a potential for reduced rates from the increased capacity in the base residual auction and because it promotes fuel-efficient and environmentally-friendly technologies to increase the output of existing generating units. Given the overall benefits of the Settlement, Trial Staff urges the Settlement Judge to certify it to the Commission and urges the Commission to accept it without modification.

18. Trial Staff, Maryland PSC and PSEG also state that PJM stakeholders also benefit from the opportunity to help PJM prioritize a stakeholder process to correct interconnection and queuing problems widely-recognized as needing regional solutions. The Maryland PSC is encouraged that nearly all the parties are interested in reforming the queue process. According to PSEG, the Settlement moves in the right direction (1) by adopting a clustering approach for the completion of system impact studies for PJM's "R" queue, which should assist in alleviating the queue backlog and may be adopted as a mechanism for conducting system impact studies for other existing and new queues; and (2) by establishing a focused scope and time frame for a PJM stakeholder process. Maryland PSC is encouraged that the Settlement includes provisions for re-chartering PJM's Regional Planning Process Working Group to undertake a meaningful stakeholder process for consideration of queue reform.

19. Exelon filed comments for the single purpose of making explicit its understanding that load will not bear any additional costs as a consequence of the Settlement's allocation of an additional 19.1 megawatts of capacity interconnection rights to Dominion. Although not explicitly stated in the Settlement, Exelon understands that any transmission upgrade costs that may result from these capacity interconnection rights will be allocated to the other projects in the "R" queue and will not be borne by load. Exelon's support for the Settlement is contingent upon this understanding, and if it is incorrect, Exelon believes that PJM is obligated to inform Exelon of this mistake immediately.

## **Opposing Comments**

### **Settlement methodology**

20. CPV is currently developing a nominally rated 640 MW combined-cycle gas-fired generation project in Charles County, Maryland. CPV's project is an Affected Project under the Settlement and is fifth in queue priority out of the fourteen projects.

21. CPV opposes the Settlement's procedures for the system impact studies for the Affected Projects. According to CPV, the Settlement method (1) violates the rule against retroactive rate-making; (2) impermissibly modifies the CPV system impact study agreement with PJM; and (3) exposes CPV (and other Affected Projects) to potentially higher network upgrade costs than would be the case under the Tariff methodology and to further delays in the completion of its system impact study.

22. According to CPV, the Settlement methodology subjects CPV to system impact study and cost allocation procedures that are not in the PJM Tariff, and that would be applied greater than 17 months after the CPV queue date was established and more than seven months after CPV and PJM executed a system impact study agreement. CPV argues that the Settlement would implement this Tariff change retroactively and without prior notice. According to CPV, Order No. 2003 refused to permit retroactive implementation of cluster studying. Further, it argues that neither delay in Dominion's system impact study, nor certainty regarding Fairless' network upgrade costs prior to the May 2008 Auction can provide an excuse for engaging in retroactive ratemaking.

23. Further, CPV maintains that the Settlement impermissibly modifies the CPV system impact study agreement with PJM. According to CPV, its system impact study agreement is a fixed rate contract, not subject to unilateral changes and is therefore subject to the public interest standard of review.<sup>10</sup> CPV further maintains that the record

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<sup>10</sup> In support of its argument, CPV cites the following language in its system impact study agreement:

[c]onsistent with section 205 of the PJM Tariff, the Transmission Provider . . . shall conduct a [system impact study] that identifies the system constraints relating to the New Service Requests being evaluated in the study and the Attachment Facilities, Local Upgrades, and Network Upgrades necessary to accommodate such New service Requests.

(continued...)

in this proceeding contains no evidence that would support the abrogation of CPV's system impact study agreement as in the public interest. Further, CPV argues that the continued application of the Tariff Methodology for conducting system impact studies and allocating network upgrade costs will not impair the financial ability of any utility – including Dominion – to provide service. Moreover, according to CPV, PJM has indicated that Fairless's participation in the May 2008 Auction will not affect reliability or have a significant effect on clearing prices. For these reasons, CPV asks the Commission to reject the Settlement methodology.

24. CPV also states that, even assuming that the Settlement did not violate the rule against retroactive ratemaking and the *Mobile-Sierra* doctrine, it still does not satisfy the Commission's requirements for waiver of existing tariff provisions. CPV maintains that the Commission has held that "a party seeking such a waiver must show that the waiver is in the public interest because, as a general proposition, we believe that waivers are not in the public interest."<sup>11</sup> Further, CPV maintains that the Commission grants waivers only in narrow circumstances: (1) an emergency situation; (2) a need to correct unintentional error; or (3) a matter of overriding regional significance that provided substantial benefits to customers without any undesirable consequences. According to CPV, the circumstances surrounding the delay in completing Fairless's Project R81 system impact study does not meet these criteria.

25. Finally, CPV opposes the Settlement because it claims that the Settlement exposes CPV and other Affected Projects to potentially higher network upgrade costs than would be the case under the Tariff Methodology and to further delays in the completion of its system impact study. CPV argues that neither the Settlement nor the Explanatory Statement quantifies what impact, if any, the Settlement methodology will have on the system impact study and cost allocation results for the Affected Projects as compared to the Tariff Methodology. CPV understands that the intent of the Settlement methodology is to conduct the system impact study in a manner that is simpler and faster, but that will produce study and cost allocation results that do not materially differ from what would happen under the Tariff Methodology. However, according to CPV, there is a very real

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System Impact Study Agreement § 5.

This [system impact study] agreement or any part thereof, may not be amended, modified, or waived other than by a writing signed by all parties hereto.

System Impact Study Agreement § 15.

<sup>11</sup> CPV Initial Comments at 13, citing *California Indep. Sys. Operator Corp.*, 103 FERC ¶ 61,260, at P 13 (2003) (emphasis added).



possibility that the Settlement could result in materially higher network upgrade costs, particularly for CPV, because its Project R17 is fifth in queue priority out of the fourteen projects, and because CPV's feasibility study suggests it will incur much lower network upgrade costs than the Affected Projects that follow it.

26. CPV maintains that it and other Affected Parties are at risk that transmission owners will not identify the lower-cost upgrades needed to accommodate their projects by the April 15 deadline set forth in section 6 of Appendix A of the Settlement. CPV argues that failure to identify lower-cost upgrades will almost certainly result in shifting network upgrade costs from lower-queued projects to higher-queued projects that could otherwise be accommodated by lower-cost upgrades.

27. According to CPV, transmission owners may not be able to identify those lower-cost upgrades by April 15. Further, some transmission owners are not parties to the Settlement and have no obligation to exercise best efforts, due diligence or any other heightened standard in identifying lower-cost upgrades. Given the importance of identifying these lower-cost upgrades, CPV maintains that there is no sound reason for imposing an arbitrary April 15 cut-off date on transmission owners to provide this critical information – particularly when the April 28 deadline for PJM to complete the consolidated system impact study is subject only to a good faith effort.

28. Further, according to CPV, it had previously been told by PJM as recently as February 2008 that it could expect the results of the short-circuit and thermal analysis components of its system impact study by late-March 2008. The results of these analyses will inform CPV's understanding of whether certain network upgrades might be required that could affect CPV's commercial in-service date. CPV believes that, under the Settlement methodology, those results will likely be delayed.

29. Finally, CPV argues that the Settlement methodology is untested and unknown. The risk of error is amplified by the fact that the Settlement methodology was developed quickly and late during settlement process, and will be implemented for the first time under a highly compressed timeframe. According to CPV, PJM and the settling parties have failed to provide the Commission with any assurances, or evidence to support such assurances, that the Settlement methodology will not expose CPV and other Affected Projects to materially higher network upgrade costs. CPV asserts that the Commission may not adopt this settlement because the record does not contain substantial evidence upon which to base a reasoned decision that the Settlement methodology will not harm CPV or other Affected Projects.

30. Further, CPV maintains that, under similar circumstances, the Commission has recognized that projects affected by retroactive application of changes to interconnection study procedures must be held harmless from financial exposure to increases in network

upgrade costs and delays.<sup>12</sup> In the absence of firm conditions on the Settlement holding CPV harmless from any increased costs or delays, the Commission should reject the Settlement methodology.

**Increase in Fairless' capacity interconnection rights.**

31. CPV does not oppose increasing Fairless' capacity interconnection rights by 19.1 MW, from 1,075 MW to 1,094.1 MW, in return for Dominion withdrawing its Complaint with respect to its claim that it is entitled to 1,145 MW of capacity interconnection rights. However, CPV does oppose allocation of network upgrade costs associated with the 19.1 MW to the Affected Projects, for the reasons set forth herein.

32. CPV notes that Article Four of the Settlement states that it does not constitute an admission as to the merits of any allegation or contention in the proceeding and, if accepted by the Commission, that it will not constitute a determination on the merits or be deemed a "settled practice" or precedent for future proceedings. However, according to CPV, the cost of accommodating the additional 19.1 MW should not be borne by CPV and the other Affected Projects, but by the party or parties who would have borne the network upgrade costs in prior queues or Regional Transmission Expansion Plans (RTEPs) had the 19.1 MWs of capacity interconnection rights been added to the base case in 2004. If that is no longer feasible, then the cost of any additional network upgrades associated with the 19.1 MW of capacity interconnection rights should be included in the 2008 RTEP on the grounds that, ultimately, load benefited from the transmission capacity created by PJM's 19.1 MW reduction of Fairless's capacity interconnection rights.

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<sup>12</sup> *California Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226, *order on reh'g*, 120 FERC ¶ 61,180 (2007) (*TWRA Order*). In the *TWRA Order*, the Commission granted a waiver of the California Independent System Operator Corporation (CAISO) Tariff and Section 4.2 of its Large Generator Interconnection Procedures to permit CAISO to change the Queue Cluster Window from 180 days to 33 months to permit simultaneous study of pending generator interconnection requests in the Tehachapi Wind Resource Area. On rehearing, Calpine Corporation (Calpine) requested clarification that the waiver not cause it to lose the financial benefits of its current queue position due to either higher network upgrade costs or delay. The Commission granted Calpine's request for clarification stating that the waiver had been granted based on assurances that Calpine's Pastoria Energy Facility Expansion Project would not be subject to additional financial exposure for network upgrade costs due to the waiver and its inclusion in the clustered system impact study and that its interconnection would not be unduly delayed. *TWRA Order*, 120 FERC ¶ 61,180 at P 16, 21.

**PJM stakeholder process on interconnection practices**

33. CPV does not oppose the PJM stakeholder processes set out in section 3.4 of the Settlement so long as the Commission clarifies that the Settlement does not: (1) restrict the PJM stakeholder committees from considering changes to the PJM Tariff other than those listed in the Settlement; or (2) oblige PJM to file any changes to the Tariff that do not receive the requisite approvals or endorsements by PJM stakeholder committees. With respect to the first clarification, CPV understands that stakeholders would be allowed to evaluate the proposed changes described in section 3.4(a) in light of other or alternative changes to be addressed in the subsequent stakeholder proceedings established under section 3.4(c). As to the second clarification, CPV understands that section 3.4(a) of the Settlement does not impose any affirmative obligation on PJM to file changes that the stakeholders do not approve and that PJM management does not support, i.e., the word “shall” should be understood to mean “may.”

**Reply Comments****Settlement methodology**

34. PJM and Dominion reject CPV’s claim that the Settlement violates the rule against retroactive ratemaking. PJM and Dominion contend that the Settlement does not retroactively change the terms or conditions for a system impact study that has been completed; rather, it provides a mechanism for hastening the completion of future system impact studies in the “R” queue. PJM and Trial Staff argue that the Settlement is not retroactively setting rates because the system impact study, which is the focus of the Settlement, only provides a non-binding estimate of costs, which are always subject to change. “Actual costs” are not established until construction of the upgrades is complete. In other words, it is impossible for the Settlement to alter CPV’s existing rates because CPV does not have any existing rates to alter.

35. Moreover, PJM and Dominion assert that CPV clearly had notice that the Settlement methodology was a possible solution to the queue backlog. Trial Staff also disagrees with CPV’s implied contention that the system impact study agreement creates a project-specific right for PJM to study its system in an iterative fashion. Trial Staff, PJM and Dominion note that the PJM Tariff clearly provides that PJM has the authority and discretion to implement “clustering” for purposes of processing the queue. Further, according to PJM and Dominion, the formal notice of Dominion’s complaint and CPV’s active participation in settlement discussions clearly provided it with the requisite notice that the interconnection queuing and study process might be altered in a manner that would affect CPV’s interconnection requests.

36. PJM, Dominion and Trial Staff disagree that the Settlement modifies CPV’s system impact study agreement, and can be modified only pursuant to the “public interest” standard of review. Dominion rejects CPV’s argument because the public

interest standard only applies to fixed rate contracts and the system impact study agreement is not a fixed rate contract because it is not a rate on file with the Commission. According to PJM, the only rate established by the system impact study agreement is the price to be paid for the completion of the study, which the Settlement does not change. Moreover, PJM asserts that the system impact study agreement incorporates the PJM Tariff, as amended from time to time, which thus allows PJM to make changes to the study procedures and cost allocation methods provided such changes are “just and reasonable” under section 205 of the FPA. Therefore, the “public interest” standard has no bearing on the Commission’s consideration of the Settlement.

37. PJM and Dominion also disagree with CPV’s claim that the Settlement is an impermissible waiver of the Tariff. First, Dominion argues that CPV’s claim is irrelevant because the Commission can approve the Settlement as a package if it finds that the overall result is just and reasonable. Given the significant ratepayer benefits and minimal risk to the parties associated with this Settlement, Dominion strongly believes that the Commission should and will find that the overall package produces a just and reasonable result.

38. Further, PJM and Dominion state that the Commission will grant a waiver where “good cause” is shown, where there are no undesirable consequences, and where the resultant benefits to customers are evident. According to PJM and Dominion, the Settlement’s waiver falls within this exception because it is a one-time action to relieve a delay in processing study agreements for a limited number of pending interconnection requests, the undesirable consequences are few and speculative at best, and the benefits to customers-increased competition and lower prices are certainly evident.

39. Trial Staff then claims that CPV’s interpretation of Commission precedent regarding the approval of contested settlements is deceptively oversimplified. According to Trial Staff, CPV argues that if a Settlement is contested, then it can only be approved if the Commission finds that it establishes “just and reasonable” rates. However, Trial Staff insists that under Rule 602 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.602(h) (2007), the Commission may approve the Settlement if CPV has failed to establish a genuine issue of material fact. Trial Staff contends that CPV’s filed rate and retroactive ratemaking arguments can be resolved based purely on a legal interpretation of CPV’s system impact study agreement and PJM’s Tariff, which means that CPV has not established a genuine issue of material fact. Regardless, Trial Staff claims that, even if CPV has established a genuine issue of material fact, the Commission may still approve the Settlement if it determines that the record contains substantial evidence that each of CPV’s contentions lack merit and that the Settlement, as a package, is “fair and reasonable.”

40. Dominion argues that CPV has not shown with any degree of certainty or specificity that the Settlement will result in increased costs or delays to CPV. Though CPV’s initial comments present a scenario that could result in higher network upgrade

costs for CPV, they do not analyze the probability that the scenario will occur. Dominion contends that this analysis is necessary because there is also a chance that CPV's network upgrade costs would increase under the current methodology due to generators dropping out of queue ahead of CPV. Given that the Settlement methodology will expedite the queuing process, bringing more competition to the market and lower prices to consumers, Dominion urges the Commission to reject CPV's allegations of harm as being too speculative to offset the benefits of the Settlement.

41. With respect to the possible consequences of the waiver, PJM argues that CPV's request to be held harmless from any additional costs is unwarranted because (1) less costly upgrades can and will be incorporated into subsequent studies; (2) there is only a small chance of a material shift in costs among the clustered generators; and (3) the interconnection studies have never provided a binding estimate of costs, which means that CPV's costs would be subject to change even without the Settlement.

42. Trial Staff and Exelon oppose delaying the May 2008 base residual auction. According to Exelon, delaying the auction would belie its fundamental purpose, which is to provide certainty for suppliers bidding-in capacity. According to Trial Staff, CPV has not provided an explanation of why this would be an appropriate remedy. In the absence of a reasonable basis for such drastic action, Trial Staff urges the Commission to reject this proposal.

#### **Increase in Fairless' capacity interconnection rights**

43. Exelon's reply comments reiterate that its support of the Settlement is conditioned on the fact that no additional network upgrade costs are allocated to load. Exelon opposes any attempt to alter the Settlement in a manner that is inconsistent with that premise. Finally, if the Commission does not approve the Settlement's award of 19.1 megawatts of capacity interconnection rights to Dominion, Exelon requests that this issue be resolved through "paper hearing procedures."

44. In response to Exelon's concerns, PJM claims that the Settlement's allocation of 19.1 megawatts of capacity interconnection rights should not cause load to bear additional associated costs. For load to bear such costs, PJM explains that a series of highly unlikely events would have to occur, and even then, the costs in question would be relatively small. However, PJM cannot guarantee Exelon that load will not incur any associated costs.

45. Trial Staff also opposes Exelon's request that PJM acknowledge that it will hold load harmless for any increased costs to it resulting from the 19.1 megawatts of capacity interconnection rights accorded to Dominion. First, Trial Staff notes that Exelon signed the Settlement despite the fact that it does not contain such "hold harmless language." Furthermore, Exelon professes throughout its comments that it supports the Settlement, which Trial Staff contends constitutes a waiver of any right to object to the Settlement.

Moreover, Trial Staff insists that Exelon is prohibited from contesting the settlement because it failed to show, via affidavit, that there is some genuine issue of material fact, which would render the Settlement contested.

46. PJM opposes CPV's claim that it and the other Affected Projects should not have any cost responsibility for system upgrades needed to provide Dominion with the 19.1 megawatts of capacity interconnection rights provided in the Settlement. PJM urges the Commission to reject CPV's claim because it appears that any upgrade costs will be relatively small and because this aspect of the Settlement must be considered in the context of the contested issue it resolves. With respect to the latter point, PJM explains that Dominion's complaint demanded 1145 megawatts of capacity interconnection rights, which would have required PJM to allocate seventy (70) additional megawatts to Dominion without charging upgrade costs. Though it is possible that the Commission would agree with PJM's position that Dominion is not entitled to any further megawatts of capacity interconnection rights, it is also possible that the Commission would agree with Dominion, which would undoubtedly necessitate upgrades far more costly than those required for the allocation of 19.1 megawatts. Therefore, PJM asserts that the Settlement is a compromise that reduces CPV and all other Affected Projects' exposure to costly upgrades and protects them from incurring additional litigation costs. Therefore, the Commission should approve this aspect of the Settlement as a just and reasonable resolution.

47. Finally, Dominion notes that, although CPV and Exelon contend that they should not bear any network upgrade costs associated with restoring Dominion's 19.1 megawatts of capacity interconnection rights, neither party challenges Dominion's right to those megawatts. Therefore, Dominion claims that its right to the 19.1 megawatts stands unchallenged, and the Commission should approve the Settlement as a fair and reasonable balance between Dominion's entitlement to restoration of its claimed capacity rights and any potential impact which this restoration will have on the affected parties.

#### **PJM stakeholder process on interconnection practices**

48. PJM and Trial Staff oppose CPV's request for clarification of the wording of the Settlement's stakeholder provision to read that PJM "may" (rather than "shall") file changes to its Tariff to address queuing issues if they have not been timely addressed through the stakeholder process. According to PJM, CPV's clarification is incorrect because the Settlement means what it says, i.e., that if the stakeholders do not endorse or approve Tariff changes on some or all of the topics stated in section 3.4(a) by a certain date, then PJM will unilaterally file proposed Tariff revisions to address those matters. Trial Staff believes that there is no reason to substitute the word "may" for "shall" because the parties clearly agreed to use the word "shall" in order to require PJM to file a proposed solution to the problems even if the stakeholder process cannot produce one.

49. PJM states that this provision does not require PJM to file tariff revisions it does not support, nor to file any or all proposed tariff changes that did not receive stakeholder endorsement or approval. The provision certainly does not prejudice CPV, as it contemplates only a filing of proposed tariff revisions, regarding which CPV and others will have an opportunity to express their views to the Commission. Finally, PJM states that the provision's merit is underscored by its consistency with the Commission's March 20, 2008, order identifying queuing issues the Commission believes need to be addressed by regional transmission organizations such as PJM.<sup>13</sup>

### **Discussion**

50. Upon consideration of the comments filed by Trial Staff and parties, we decide the contested issues on their merits and conclude that CPV raises no genuine issue of material fact. We find that the Settlement, as a package, is just and reasonable. Based on these findings, we approve the Settlement, as discussed below.

### **Settlement methodology**

51. The Commission rejects CPV's argument that the Settlement violates the rule against retroactive ratemaking. First, the Commission disagrees with CPV that the system impact study procedures are not in the PJM Tariff. Rather, the PJM Tariff gives PJM the sole discretion to perform a cluster study. Section 205.1 of the PJM Tariff provides:

205.1 Coordination: The Transmission Provider shall coordinate, to the extent practical, all System Impact Studies conducted pursuant to this Section 205 for New Service Customers. *Such coordination may involve, at the Transmission Provider's sole discretion, combining System Impact Studies for multiple New Service Requests into one study.* Transmission Provider shall describe in the PJM Manuals the process by which it will coordinate System Impact Studies and Facilities Studies pertaining to different types of New Service Requests. [emphasis added]

Therefore, the Commission agrees with Trial Staff, PJM and Dominion that the PJM Tariff gives notice that system impact studies may be performed in a cluster.<sup>14</sup>

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<sup>13</sup> See *Interconnection Queuing Practices*, 122 FERC ¶ 61,252 (2008).

<sup>14</sup> Consistent with PJM's Tariff, PJM's manuals provide that the costs will be allocated in the course of the system impact study.

52. In addition, as noted by PJM and Trial Staff, the system impact study agreement does not set a rate for interconnection service. It merely provides that CPV has applied for interconnection service. Therefore, there is no rate on file for the Commission to change. Rather, the Settlement provides a mechanism through which PJM will perform the study that will provide a non-binding estimate of costs. Even the estimated costs determined by the system impact studies are not final; they will be established once the upgrades are constructed.

53. In addition, nothing in CPV's system impact study agreement requires that PJM perform individual system impact studies. It merely provides that PJM "shall perform a System Impact Study."<sup>15</sup> Further, CPV's system impact study agreement incorporates the provisions of Part VI of the PJM Tariff, which includes the language quoted above specifically allowing PJM to perform a cluster study. Therefore, we disagree with CPV that we are abrogating its system impact study agreement.

54. Finally, the cost concerns raised by CPV are speculative at best. CPV has offered no evidence that it will suffer harm as a result of this Settlement. The case cited by CPV, *TWRA Order*,<sup>16</sup> is inapplicable to this settlement. In that proceeding, the Commission granted waiver of the tariff to lengthen the queue window. Here, in approving the settlement, we are allowing PJM to perform a cluster system impact study, which it is already allowed to do under the tariff, and CPV has not shown that any other provision of the Settlement constitutes a tariff waiver<sup>17</sup> or should not be approved. Therefore, we deny CPV's comment and approve the settlement.

#### **Increase in Fairless's Capacity Interconnection Rights**

55. With respect to the cost allocation for the increase in Dominion's capacity interconnection rights for the Fairless facility, the Commission notes that Exelon signed the Settlement despite the fact that it does not contain such "hold harmless language."

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<sup>15</sup> System Impact Study Agreement, Recital 5.

<sup>16</sup> *See supra* note 12.

<sup>17</sup> CPV also protests a general waiver provision in section 2.3(c) of the Settlement, arguing generally that the Settlement does not meet the Commission's standards for waiving tariff provisions. However, CPV fails to point to any specific provision in the PJM Tariff that would need to be waived in order to effectuate the Settlement; in this regard, pursuant to Rule 602, comments opposing a settlement must include an affidavit detailing any disputed material issue of fact; 18 C.F.R. § 385.602(e)(4) (2007). Further, as found above, a cluster system impact study does not violate the PJM Tariff.



56. The Commission finds that, as a part of the settlement package, PJM's treatment of the additional 19.1 megawatts of capacity interconnection rights provided in the Settlement is part of a just and reasonable resolution to the complaint. Neither CPV nor Exelon challenges Dominion's right to those capacity interconnection rights nor provides the evidence required under Rule 602, *see supra* note 18, that Dominion is not entitled to those interconnection rights. Without such evidence, their claim of adverse cost impact to other Affected Parties is speculative. The Commission therefore rejects the Exelon and CPV protests and approves the settlement.

**PJM stakeholder process on interconnection practices**

57. Finally, the Commission approves the Settlement's proposed stakeholder process on interconnection practices.<sup>18</sup> This process allows PJM stakeholders to evaluate various issues surrounding PJM's interconnection queue process. The Commission does not believe it restricts the PJM stakeholder committees from considering alternate changes to the PJM Tariff other than those listed in the Settlement.

58. However, we deny CPV's request to clarify the Settlement with regard to the filing of changes to the PJM Tariff that do not receive approvals or endorsements by PJM stakeholder committees. The Commission appreciates CPV's concern that PJM may file changes that the stakeholders do not approve. If PJM files changes to its Tariff to revise its interconnection queuing provisions that are not approved by the stakeholders, however, any entity objecting to those provisions will have an opportunity to file comments with the Commission. The Commission will then evaluate the proposal in light of the comments filed.

**The Commission orders:**

The Settlement is hereby approved, as discussed in the body of the order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>18</sup> *See generally Interconnection Queuing Practices*, 122 FERC ¶ 61,252 at P 9 (requiring that each independent system operator and regional transmission operator file a report that, inter alia, explains the status of stakeholder discussions on queue reform and provides a schedule for selecting and implementing necessary reforms).